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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ORACLE USA, INC., a Colorado corporation; ORACLE AMERICA, INC., a Delaware corporation; and ORACLE INTERNATIONAL CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation, and SETH RAVIN, an individual,

Defendants.

CASE NO. 2:10-cv-00106-LRH-PAL

**STIPULATION AND JOINT
STATEMENT REGARDING
HEARINGS ON RENEWED
MOTIONS**

Judge: Hon. Larry R. Hicks

The undersigned counsel, on behalf of Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International Corp. and Defendant Rimini Street, Inc., hereby submit the following joint statement regarding hearings on Oracle's renewed motions in the above-captioned matter.

I. JOINT STATEMENT

Following the Ninth Circuit's vacatur and remand of the permanent injunction and attorneys' fees award issued by this Court, Oracle filed its Renewed Motion for Permanent Injunction on March 21, 2018 (ECF No. 1117), and filed its Renewed Motion for Attorneys' Fees on March 26, 2018 (ECF No. 1118). Rimini filed its opposition to Oracle's injunction motion on April 4, 2018 (ECF No. 1130), and Oracle filed its reply brief on April 11, 2018 (ECF No. 1139). Rimini's opposition to Oracle's renewed attorneys' fees motion is currently due May 25, 2018, and Oracle's reply brief is due June 1, 2018. *See* ECF No. 1128.

The parties jointly request a hearing on Oracle's renewed motions, as the parties believe a hearing will assist the Court's resolution of those issues. The parties also jointly state their availability to come to the Court's chambers in Reno (rather than Las Vegas) for the hearing.

1 The parties, however, disagree on whether the motions should be heard together in a
 2 consolidated hearing (Rimini's view) or whether the injunction motion should be heard earlier
 3 than the attorneys' fees motion (Oracle's view).

4 As to the hearing on Oracle's renewed attorneys' fees motion, the parties request any of
 5 the following dates, or another date that is convenient for the Court:

- 6 • July 9, 2018
- 7 • July 23, 2018
- 8 • July 26, 2018
- 9 • July 30, 2018

11 II. THE PARTIES' DISAGREEMENT

12 The parties were unable to agree on a hearing date for Oracle's permanent injunction
 13 motion. Each party's proposal is provided below.

14 A. Rimini's Proposed Hearing Date

15 Rimini respectfully requests a single hearing on both motions to be held after Oracle's
 16 attorneys' fees motion is fully briefed.

17 Rimini believes that a single hearing will be most efficient for the parties and the Court.
 18 That was the case in 2016 when the Court held a consolidated hearing on Oracle's post-trial
 19 attorneys' fees and permanent injunction motions, particularly because both motions involved
 20 overlapping considerations (such as the jury's finding of innocent infringement). The same is
 21 true now.

22 There is also no urgency for resolving the injunction motion. This case has been
 23 pending for eight years, and there is an entire second case dealing with the question whether
 24 Rimini's ongoing conduct is infringing. The Ninth Circuit previously stayed the same
 25 injunction Oracle requests in its renewed motion, and the Court's ruling on the renewed
 26 injunction motion will almost certainly be appealed by one of the parties.

27 There is, in short, no need to rush in resolving the injunction motion. Instead, the
 28 parties' and the Court's interest is in taking the time necessary to deal with the complex issues

1 raised by the Ninth Circuit’s decision and Oracle’s motion. The efficiency in handling both
 2 motions together in a joint hearing outweigh Oracle’s interest in advancing the injunction
 3 hearing a few weeks.

4 Oracle argues here, as it does in its renewed motion, that “this straightforward remand
 5 can be resolved promptly.” But that position ignores the nature of the Ninth Circuit’s decision,
 6 the Ninth Circuit’s order staying the prior injunction, and the comments from the judges at the
 7 oral argument. The Ninth Circuit’s decision affirming infringement was exceedingly narrow
 8 (*see* ECF 1111 at 13–22 & n.6), the Court *reversed* the only remaining willful conduct at issue
 9 in the case (*id.* at 24–26), and as Judge Friedland remarked during the oral argument, “I don’t
 10 really understand why there also needs to be an injunction, when it seems like [Rimini is] trying
 11 to comply,” and where there is “a whole lawsuit [*i.e.*, *Rimini II*] to figure out if they’re
 12 complying with the liability determinations” (ECF No. 134-2 at 41:18–22). The Ninth Circuit’s
 13 direction for this Court on remand was not to re-issue the same copyright injunction that it
 14 considered separately from the hacking injunction and specifically vacated; it was to *reconsider*
 15 the copyright injunction given the nature of the Court’s decision. *See Oracle USA, Inc. v.*
 16 *Rimini Street, Inc.*, 879 F.3d 948, 964 & n.8 (2018). Oracle’s proposal that this Court hurry up
 17 and rubber-stamp the same injunction the Ninth Circuit stayed and then vacated is a sure-fire
 18 path to reversal.

19 **B. Oracle’s Proposed Hearing Date**

20 Oracle’s motion for a permanent injunction seeks to halt Rimini’s *ongoing* infringing
 21 conduct. Every day that Rimini’s conduct continues is a further injury to Oracle. The injunction
 22 motion is already fully briefed. Postponing a hearing on this motion so that it can be argued at
 23 the same time as the attorneys’ fees motion, which is not time-sensitive and is on a longer
 24 briefing schedule, amounts to an interim ruling in Rimini’s favor because it would allow Rimini
 25 to continue infringing Oracle’s copyrights. Oracle accordingly proposes that the Court schedule
 26 a hearing on the injunction motion for May 14, 15, 16, or 17, or some other date convenient for
 27 the Court. That will be more than a month after briefing on the motion was completed and
 28 allows ample time to address the Ninth Circuit’s narrow remand.

1 Three years ago Oracle prevailed at trial across the board on its copyright claims; the
2 jury found that Rimini had infringed all 93 copyrights at issue, and this Court then issued an
3 injunction to prevent further infringement. The Ninth Circuit has now unanimously affirmed
4 this Court's verdict of infringement. With the copyright verdict now decisively resolved on the
5 merits, prompt consideration of Oracle's renewed motion for a permanent injunction is
6 warranted. As this Court previously noted, "an injunction should issue when the intervention
7 of the court in equity is essential to protect a party's rights against injuries that could not
8 otherwise be remedied." ECF No. 1049 at 3-4. The Ninth Circuit's limited remand on the
9 injunction concerns the sole issue of "how the district court would weigh the *eBay* factors with
10 respect to the copyright claims alone." *Oracle USA, Inc. v. Rimini Street, Inc.*, 879 F.3d 948,
11 964 (2018). The Court of Appeals' decision does not require revisiting any other issue that this
12 Court previously decided, such as the scope of the injunction. This straightforward remand can
13 be resolved promptly.

14 Rimini argues that this case has been pending for eight years, and there is a second case
15 between the parties, and therefore there is no urgency to Oracle's motion. However, this Court
16 previously found that "Oracle has established that monetary damages alone are inadequate to
17 compensate it for the losses suffered because of defendants," including because "certain harms
18 suffered by Oracle like lost market share and company goodwill are intangible injuries difficult
19 to quantify and compensate." ECF No. 6-7. Accordingly, Oracle's copyright infringement
20 damages award in this action did not fully compensate it for past injuries, and a damages award
21 in the second action is not likely to either. Delay in ruling on Oracle's motion for a permanent
22 injunction causes Oracle further injury for which it will never be compensated. Accordingly,
23 Oracle respectfully requests a hearing in the May 14-17 time frame, or another date at the
24 Court's earliest convenience.

1
2
3 Dated: May 1, 2018

4 GIBSON, DUNN & CRUTCHER LLP

5
6 By: /s/ Mark A. Perry

Mark A. Perry

7 *Attorneys for Defendants Rimini Street, Inc. and*
8 *Seth Ravin*

9
10 Dated: May 1, 2018

11 MORGAN, LEWIS & BOCKIUS LLP

12
13 By: /s/ Thomas S. Hixson

14 Thomas S. Hixson

15 *Attorneys for Plaintiffs Oracle USA, Inc., Oracle*
16 *America, Inc., and Oracle International*
17 *Corporation.*

18 **ATTESTATION OF FILER**

19 The signatories to this document are Thomas S. Hixson and me, and I have obtained
20 Mr. Hixson's concurrence to file this document on his behalf.

21 Dated: May 1, 2018

22 GIBSON, DUNN & CRUTCHER LLP

23
24 By: /s/ Mark A. Perry

Mark A. Perry

CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused to be electronically uploaded a true and correct copy in Adobe “pdf” format of the above document to the United States District Court’s Case Management and Electronic Case Filing (CM/ECF) system. After the electronic filing of a document, service is deemed complete upon transmission of the Notice of Electronic Filing (“NEF”) to the registered CM/ECF users. All counsel of record are registered users.

DATED: May 1, 2018

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Mark A. Perry
Mark A. Perry

*Attorneys for Defendants Rimini Street, Inc. and
Seth Ravin*